

48A C.J.S. Judges § 332

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act


D. Objections to Judge and Proceedings Thereon

3. Determination of Objection to Judge

§ 332. Certificate of disqualification or qualification; order

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  51(1), 51(3)

Where the statutes so require, the judge must certify the disqualification or qualification; in a proper case, an order transferring the cause must be made.

When it is properly established, a judge should certify the disqualification.¹ While no additional motion may be necessary to make a proper transfer of the case,² ordinarily, the mere disqualification of a judge does not operate to transfer the cause to another court, but there must be an order for transfer³ complying with appropriate regulatory, statutory, or constitutional provisions.⁴ However, under some statutes, the action or case is automatically removed to another court.⁵

In the absence of a statute authorizing it, the order recusing the judge must be made by the judge in open court, not at chambers.⁶ While a statute requiring a court to change the place of trial upon filing of a proper affidavit does not place the duty on counsel to draft the required order, this does not preclude the court from requesting counsel to draw and present such order.⁷

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Footnotes

¹ Fla.—*State v. Whitehurst*, 108 Fla. 465, 146 So. 589 (1933).

Okla.—*State v. Walden*, 1930 OK 114, 142 Okla. 115, 285 P. 951 (1930).

- 2 Mont.—*State v. District Court of Second Judicial Dist.*, 30 Mont. 547, 77 P. 318 (1904).
- 3 Tex.—*Poole v. Mueller Bros. Furniture & Carpet Co.*, 80 Tex. 189, 15 S.W. 1055 (1891).
- 4 Okla.—*Graham v. Cannon*, 1978 OK 9, 574 P.2d 305 (Okla. 1978).
- 5 N.Y.—*Queens-Nassau Mortgage Co. v. Graham*, 157 A.D. 489, 142 N.Y.S. 589 (2d Dep't 1913).
- 6 La.—*State ex rel. Wilkinson v. Hingle*, 48 La. Ann. 1137, 20 So. 290 (1896).
- 7 Wis.—*Schwanke v. Reid*, 16 Wis. 2d 521, 114 N.W.2d 845 (1962).

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